

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Joint Petition of Northeast Nebraska)
Telephone Company and NebCom, Inc.) CC Docket No. 94-129
and Petitions of Great Plains)
Communications, Inc. and The Nebraska)
Central Telephone Company for Waiver of)
the Requirement that a Local Exchange)
Carrier Verify Inbound Requests of)
Customers Who Want to Change to an)
Affiliated Interexchange Carrier)

TO: The Commission

COMMENTS OF THE RURAL ILECs

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ATTACHMENT A**

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
COMMENTS OF THE RURAL ILECS	1
I. BACKGROUND	3
II. THE RURAL ILECS REQUEST SIMILAR WAIVERS OF THE VERIFICATION REQUIREMENT	3
A. The Rural ILECS Do Not Slam Customers and Do Not Act Anticompetitively	4
B. The Key Is Their Small-Company, Small-Town Culture	4
C. The Verification Requirement Is Not Necessary .	6
D. The Verification Requirement Imposes Unnecessary Costs and Is Anticompetitive	7
E. Because the Rural ILECS Are Similarly Situated to the Nebraska ILECS, the Commission Should Grant Them Waivers as Well	8
III. IN THE ALTERNATIVE, THE COMMISSION SHOULD MODIFY THE VERIFICATION REQUIREMENT SO THAT IT DOES NOT APPLY TO INDEPENDENT RURAL ILECS	10
IV. CONCLUSION	13

SUMMARY

The rural incumbent local exchange carriers listed in Attachment A (collectively, the Rural ILECs) support of the waivers requested by Northeast Nebraska Telephone Company, NebCom, Inc., Great Plains Communications, Inc. and The Nebraska Central Telephone Company (collectively, the Nebraska ILECs). The Rural ILECs file these Comments to say, "Me too!" That is, the Rural ILECs request similar, permanent waivers of the verification requirement.

The Rural ILECs do not have a history of slamming customers. This new verification requirement therefore would impose unwarranted costs on these ILECs, affiliated IXCs and their customers, and have an anticompetitive effect on the affiliated IXCs. Thus, the Rural ILECs are similarly situated to the Nebraska ILECs. If the Commission were to grant relief to the Nebraska ILECs, it should grant similar relief to the Rural ILECs.

As an alternative to the waivers, the Rural ILECs request the Commission to grant the pending Petition for Reconsideration and modify the verification requirement so that it does not apply to one of the following categories of carriers: (a) independent ILECs; or (b) ILECs serving less than two percent of the nation's access lines.

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TO: The Commission

COMMENTS OF THE RURAL ILECs

The rural incumbent local exchange carriers listed in Attachment A (collectively, the Rural ILECs), by their attorney, respectfully submit these comments in support of the waivers requested by Northeast Nebraska Telephone Company, NebCom, Inc., Great Plains Communications, Inc. and The Nebraska Central Telephone Company (collectively, the Nebraska ILECs).¹ The Nebraska ILECs request waivers of the requirement for local exchange carriers (LECs) to verify inbound requests from

¹ The Nebraska Central Telephone Company Petition for Waiver, filed Oct. 10, 2003 [hereinafter Nebraska Central Petition]; Great Plains Communications, Inc. Petition for Waiver, filed Oct. 10, 2003; Northeast Nebraska Telephone Company and NebCom, Inc. Joint Petition for Waiver, filed Oct. 10, 2003; see Joint Petition of Northeast Nebraska Telephone Company and NebCom, Inc. and Petitions of Great Plains Communications, Inc. and The Nebraska Central Telephone Company for Waiver of the Requirement that a Local Exchange Carrier Verify Inbound Requests of Customers Who Want to Change to an Affiliated Interexchange Carrier, Public Notice, DA 03-3832 (Dec. 3, 2003).

customers who want to switch to the ILECs' interexchange carrier (IXC) affiliates.² The Rural ILECs hereby request similar waivers.³ In the alternative, the Rural ILECs request the Commission to eliminate the verification requirement by granting the pending Petition for Reconsideration,⁴ as discussed further below.

The Rural ILECs do not have a history of slamming customers. This new verification requirement therefore would impose unwarranted costs on these ILECs, affiliated IXCs and their customers, and have anticompetitive effects on the affiliated IXCs. There is good cause to grant the relief requested by the Rural ILECs in these special circumstances, just as there is good cause to grant the relief requested by the Nebraska ILECs.⁵

² This requirement was adopted in the Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, para. 91 (rel. Mar. 18, 2003) [hereinafter Order], clarified by Order, FCC 03-116 (rel. May 23, 2003) [hereinafter Clarification Order].

³ The Rural ILECs - like the Nebraska ILECs - do not request waivers of the requirement for a LEC to verify an inbound request from a customer who wants to change from one LEC to another LEC.

⁴ Petition for Reconsideration, Docket No. 94-129, filed May 19, 2003.

⁵ A good argument can be made that the new verification requirement is not in effect because the text of the slamming rules does not require a LEC, as an executing carrier, to verify carrier change requests. This request for waivers, or elimination, of the verification requirement is being filed out of an abundance of caution. For the sake of simplicity, these Comments refer to the verification requirement as definitely applying to the Rural ILECs.

I. BACKGROUND

The Rural ILECs are small ILECs serving rural areas. The Rural ILECs support the Nebraska ILECs' Petitions for Waiver and the pending Petition for Reconsideration filed by a group of rural ILECs which includes many of the Rural ILECs.⁶ The Rural ILECs agree that the grant of waivers to the Nebraska ILECs - and to the Rural ILECs - on a permanent basis, is an alternative to the grant of the Petition for Reconsideration.⁷ That is, if the Commission were to grant the Petition for Reconsideration, there would be no need to grant the requested waivers, and vice versa.

II. THE RURAL ILECs REQUEST WAIVERS OF THE VERIFICATION REQUIREMENT

The Rural ILECs support the Nebraska ILECs' requests for waivers of the verification requirement. The Nebraska ILECs showed that: (a) they do not slam customers; (b) they do not act anticompetitively; and (c) the verification requirement imposes unnecessary costs and is anticompetitive.⁸ The Rural ILECs are similarly situated, and request similar waivers, as discussed below.

⁶ Petition for Reconsideration att. A.

⁷ E.g., Nebraska Central Petition at 6.

⁸ E.g., id. at 6-17.

A. The Rural ILECs Do Not Slam Customers and Do Not Act Anticompetitively

The Rural ILECs do not have histories of slamming customers. Indeed, the slamming reports filed at the FCC show spotless records for these ILECs, in stark contrast to the hundreds of slamming complaints raised against unaffiliated IXCs.⁹ Also, a search of LEXIS shows that there are no FCC slamming orders involving the Rural ILECs and their IXC affiliates.¹⁰

Furthermore, no IXCs have complained that the Rural ILECs have a pattern of switching customers to affiliated IXCs without the customers' consent. Indeed, as noted by the Nebraska ILECs, when AT&T and MCI had the opportunity to do so, AT&T and MCI said nothing about rural ILECs behaving anticompetitively.¹¹ Their silence is evidence that the Rural ILECs have not acted anticompetitively.

B. The Key Is Their Small-Company, Small-Town Culture

The key reason why small ILECs take such good care of their customers is their small-company, small-town culture. Customers

⁹ Some of the slamming reports may have non-zero numbers in "Block 3: Complaints That You Received or Resolved Alleging That You Slammed a Customer." The non-zero numbers in Block 3 refer only to the complaints against unaffiliated carriers, as listed in "Block 4: Complaints That You Received Alleging That Another Carrier Slammed a Customer." In other words, none of the Rural ILECs and their IXC affiliates caused any slams referenced in Blocks 3 and 4.

¹⁰ Search of LEXIS, FCC file, Jan. 2, 2004.

¹¹ E.g., Nebraska Central Petition at 11.

of small, rural ILECs receive, and expect to receive, high quality service from customer service representatives (CSRs). Rural ILECs tend to have, at most, just a few CSRs who are full-time staff of the ILECs. The CSRs typically live and work in communities served by the ILECs. In many cases, the CSRs know the customers from previous business and social interactions. For example, Franklin Telephone Company serves less than 800 lines. It would be disingenuous for their staff to purposefully make errors in processing carrier change requests in such a small community. And for those ILECs that are cooperatives, such as Western Iowa Telephone Association, the customers own the phone companies. Due to these relationships, the CSRs undoubtedly take special care of the customers. They strive to give careful, personal service to each customer that calls or comes into the ILECs' offices. And the CSRs are not penalized for taking their time in responding to the customers' questions and ensuring that the customers obtain the desired telephone services.¹²

This hands-on approach also means that the Rural ILECs (and affiliated IXC's) do not use outside telemarketers - thereby eliminating a key source of slamming complaints.¹³

In sum, the key to virtually error-free execution of carrier change requests is the hands-on, personal service provided by

¹² See, e.g., id. at 7-8.

¹³ See, e.g., id. at 7.

small, rural ILECs, such as the Rural ILECs and the Nebraska ILECs.

C. The Verification Requirement Is Not Necessary

The two goals of the verification requirement are to deter slamming and prevent anticompetitive behavior.¹⁴ Just as the Nebraska ILECs showed that they realized these goals before the adoption of the verification requirement,¹⁵ the Rural ILECs' records show that they too realized these goals before the adoption of the verification requirement.

Also, just as the past records of the Nebraska ILECs can be used to predict that they will not slam customers or act anticompetitively in the future,¹⁶ the past records of the Rural ILECs can be used to predict that the Rural ILECs will not slam customers or act anticompetitively in the future.

In sum, because the two goals of the verification requirement were met before it was adopted, there is no reason to impose the verification requirement on the Nebraska ILECs and the Rural ILECs.

¹⁴ See, e.g., id. at 10.

¹⁵ E.g., id. at 9, 11.

¹⁶ E.g., id.

D. The Verification Requirement Imposes Unnecessary Costs and Is Anticompetitive

The Nebraska ILECs showed that the verification requirement imposes unnecessary costs. Those ILECs, their affiliated IXCs and their customers will need to bear the cost of verification. But this cost is not incurred when a customer switches to an unaffiliated IXC.¹⁷ Yet the Nebraska ILECs and their affiliated IXCs cannot shoulder that burden as readily as larger carriers can. The same is true for the Rural ILECs.¹⁸

The Nebraska ILECs also pointed out that the verification requirement is anticompetitive in its implementation.¹⁹ The Nebraska ILECs noted that if the LEC uses a letter of agency (LOA) for verification, it could take a week for a LEC to receive a completed LOA back from the customer and then process the carrier change request.²⁰ By comparison, a change to an unaffiliated IXC could be processed immediately because no verification is required. Thus, the verification requirement can make it more difficult for a customer to change to an affiliated IXC - thereby harming competition.²¹ For these same reasons, the

¹⁷ E.g., id. at 12-13.

¹⁸ Small LECs "have more limited financial resources and relatively higher expenses than large telephone companies." 147 Cong. Rec. H1030 (Mar. 21, 2001) (statement of Rep. Bereuter).

¹⁹ E.g., Nebraska Central Petition at 15-17.

²⁰ E.g., id. at 15.

²¹ See Presubscribed Interexchange Carrier Charges, Order and Notice of Proposed Rulemaking, 17 FCC Rcd. 5568 para. 12 (2002) (making carrier changes easy for consumers helps spur competition).

Rural ILECs agree that the verification requirement is anticompetitive. And they do not want their affiliated IXC's to face unnecessary regulatory barriers as they strive to obtain and retain customers in the competitive interexchange marketplace.

E. Because the Rural ILECs Are Similarly Situated to the Nebraska ILECs, the Commission Should Grant Them Waivers as Well

The Rural ILECs agree that the Nebraska ILECs' particular circumstances constitute good cause for the Commission to grant their waiver requests.²² The Rural ILECs submit that their individual circumstances constitute good cause for the Commission to grant waivers to them as well. The Rural ILECs have shown that the requirement to verify inbound carrier change requests for changes to affiliated IXC's is not necessary to deter slamming and anticompetitive conduct. Yet, the verification process imposes unnecessary costs, and presents a barrier to the ability of affiliated IXC's to obtain and retain customers.

Thus, the Rural ILECs are situated similarly to the Nebraska ILECs. If the Commission were to grant waivers to the Nebraska ILECs, the Commission should also grant waivers to the Rural ILECs, in accordance with Melody Music v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965) (similarly situated parties should be treated similarly).

²² E.g., Nebraska Central Petition at 17-19.

The Rural ILECs also support the Nebraska ILECs' request for the waivers to be permanent. The Rural ILECs request that their waivers be permanent for the same reasons.²³

Furthermore, the Rural ILECs agree that waivers should be granted to the Nebraska ILECs without requiring them to file periodic status reports.²⁴ The Rural ILECs similarly request that their waivers be granted without being conditioned on the filing of periodic reports. If a customer is slammed, the customer readily could file a complaint with the FCC or the relevant state commission. As the Commission stated in its closed captioning proceeding, the Commission's enforcement processes alleviate the need for reporting and its associated burdens.²⁵ Similarly, the enforcement processes at the FCC and state commissions serve to monitor slamming and eliminate the need for a federal reporting requirement.

In sum, the Nebraska ILECs and the Rural ILECs satisfy the Commission's standards for granting waivers. The waivers should be permanent and need not be conditioned on the filing of periodic reports.

²³ E.g., Nebraska Central Petition at 23-24.

²⁴ E.g., id. at 24.

²⁵ Closed Captioning and Video Description of Video Programming, Order on Reconsideration, 13 FCC Rcd. 19,973 para. 126 (1998).

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD MODIFY THE VERIFICATION REQUIREMENT SO THAT IT DOES NOT APPLY TO INDEPENDENT RURAL ILECS

Instead of granting waivers of the verification requirement to the Nebraska ILECs and the Rural ILECs, the Commission could exempt these ILECs from the verification requirement. This essentially is the relief requested in the pending Petition for Reconsideration.

The Petition for Reconsideration requests the Commission to eliminate the verification requirement in its entirety.²⁶ The Rural ILECs support the Petition. However, the Rural ILECs also suggest two alternatives to completely eliminating the verification requirement. The goal of both alternatives would be to exempt small, rural ILECs - in recognition of their small-company, small-town cultures which result in quality service to customers.

The two alternatives are: (a) an exemption for all independent ILECs; and (b) an exemption for all "two percent LECs." There is good reason to adopt either alternative.

An exemption for all independent LECs is supported by the reason the Commission gave when it adopted the verification requirement: that LECs were beginning to provide interexchange service.²⁷ Those LECs are only the Bell Companies. In general,

²⁶ Petition for Reconsideration at 10.

²⁷ Order para. 90.

independent LECs have been able to provide interexchange service for a long time, and many already have IXC affiliates. Thus, if the Commission's concern truly is those ILECs that just now have been permitted to provide interexchange service, the Commission could limit the verification requirement to those ILECs - the Bell Companies - thereby exempting the independent ILECs.

The second alternative is to exempt all ILECs that serve less than 2% of the nation's total access lines - called the "two percent LECs." This exemption would be consistent with the Congressional intent in adopting special provisions for two percent LECs in the Telecommunications Act of 1996. Section 251(f)(2) of the Communications Act of 1934, as amended, states that two percent LECs may be exempted from some of the regulations applicable to all ILECs if those regulations would adversely impact consumers or impose undue economic burdens on the ILECs, as long as the exemption would be in the public interest.²⁸ The Senate also had proposed that two percent LECs could be exempted if the regulations "would result in unfair competition."²⁹ In the case at hand, the Nebraska ILECs and the Rural ILECs have shown that the verification requirement adversely impacts consumers (by raising costs and discouraging carrier changes), unduly burdens ILECs, and results in unfair

²⁸ 47 U.S.C. § 251(f)(2).

²⁹ See H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 119 (1996).

competition - whereas an exemption for two percent LECs would be in the public interest. Thus, all of the aforementioned conditions for granting exemptions to two percent LECs have been met by the Nebraska ILECs and the Rural ILECs. And much of what has been said about the Nebraska ILECs and the Rural ILECs, in these Comments and in the Petitions for Waiver, likely applies to all of the two percent LECs - which offer careful, personal, hands-on customer service. Thus, exempting the two percent LECs from the verification requirement would be consistent with the intent of Congress in providing procedures for two percent LECs to obtain exemptions from other regulations. In addition, an exemption that is based on size would reflect the Commission's prior determination that the incentive to engage in anticompetitive behavior increases with the size of the company.³⁰ In other words, smaller ILECs have less incentive to engage in anticompetitive conduct.

Furthermore, all of the Nebraska ILECs and the Rural ILECs would be included in either of the alternative exemptions suggested above. A modification of the verification requirement to provide either of these alternative exemptions would provide

³⁰ See Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines, Memorandum Opinion and Order, 14 FCC Rcd. 14,712 para. 228 (1999).

relief equivalent to the waivers requested by the Nebraska ILECs in their Petitions and the Rural ILECs in these Comments.

To adopt either one of the exemptions, the Commission could modify the Order and the Clarification Order to state:

LECs must verify carrier change requests when a customer initiates a call to the LEC, unless:

(a) the customer is requesting a change to the LEC's interexchange carrier affiliate; and the LEC is {[an independent incumbent local exchange carrier] or [an incumbent local exchange carrier that serves less than 2% of the nation's access lines]}; or

(b) the customer is requesting a change to a carrier that is not the LEC or an affiliate of the LEC.³¹

(Only one of the phrases in the square brackets would be used.)

Either of the alternative exemptions in subsection (a) would target relief to those ILECs that provide small-company, small-town, hands-on service to their customers, while continuing to require the largest ILECs to verify inbound carrier change requests.

IV. CONCLUSION

For the foregoing reasons, the Rural ILECs support the waivers requested by the Nebraska ILECs. The Rural ILECs file these Comments to say, "Me too!" That is, the Rural ILECs

³¹ Corresponding changes should also be made to the text of the slamming rules.

request permanent waivers of the verification requirement, because their circumstances are similar to those of the Nebraska ILECs. In the alternative, the Commission could grant the Petition for Reconsideration and modify the verification requirement so that it does not apply to: (a) independent ILECs; or (b) ILECs serving less than two percent of the nation's access lines.

Respectfully submitted,

**RURAL INCUMBENT LOCAL EXCHANGE
CARRIERS LISTED IN ATTACHMENT A**

By



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January 2, 2004

ATTACHMENT A

RURAL ILECs

Alpine Communications LC
Arlington Telephone Company
Big Sandy Telecom, Inc.
Bluestem Telephone Company
C-R Telephone Company
Chautauqua and Erie Telephone Corporation
China Telephone Company
Chouteau Telephone Company
Clarks Telecommunications Co.
Columbine Telecom Company
Consolidated Telco Inc.
Consolidated Telephone Company
Consolidated Telecom, Inc.
Eastern Nebraska Telephone Company
Ellensburg Telephone Company, Inc.
Franklin Telephone Co., Inc.
Fremont TelCom
Gearheart Communications Inc d/b/a
 Coalfields Telephone Company
GTC, Inc.
Lexcom Telephone Company
Maine Telephone Company
Marianna and Scenery Hill Telephone Company
Northland Telephone Company of Maine, Inc.
Odin Telephone Exchange, Inc.
Peoples Mutual Telephone Company
Rock County Telephone Company
Sidney Telephone Company
Standish Telephone Company, Inc.
STE/NE Acquisition Corp. d/b/a Northland Telephone
 Company of Vermont
Sunflower Telephone Co., Inc.
Taconic Telephone Corp.
The Blair Telephone Company
The El Paso Telephone Company
The Columbus Grove Telephone Company
The Hamilton Telephone Company
The Orwell Telephone Company
Waitsfield-Fayston Telephone Company
Western Iowa Telephone Association
Yates City Telephone Company
YCOM Networks, Inc.